

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DAVID KENT MOORE

Claimant

VS.

PRAIRIE LAND BUILDERS

Respondent

AND

EMPLOYERS INSURANCE OF WAUSAU

Insurance Carrier

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Docket No. 228,469

ORDER

Claimant appeals from the preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes dated June 29, 1998, wherein the Administrative Law Judge denied claimant benefits, finding that claimant had failed to establish the relationship of employer and employee existed on the date of the alleged accident.

ISSUES

Did the relationship of employer/employee exist between claimant and respondent on the date of accident?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board makes the following findings of fact and conclusions of law:

Claimant described himself as a framer contractor working for respondent on a bid basis. Claimant was paid in draws taken based upon a percentage of the work completed. The money paid by respondent to claimant involved no tax or unemployment deductions. Claimant was responsible for providing his own employees and equipment, including tools and scaffolding.

Respondent exercised control only as to the end result, meaning the finished product, and exercised no additional control regarding when claimant worked or how claimant performed the framing job.

Claimant carried workers' compensation insurance upon his employees but elected not to cover himself under the policy.

The Administrative Law Judge, in considering the evidence and the language of K.S.A. 1996 Supp. 44-503, found claimant to be an independent contractor as the control necessary for an employer/employee relationship did not exist in this circumstance. The Appeals Board, after considering the evidence, finds claimant was an independent contractor and not an employee of respondent and the Workers' Compensation Act does not apply to these circumstances. Therefore, the Appeals Board finds the Order of the Administrative Law Judge should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated June 29, 1998, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 1998.

BOARD MEMBER

c: W. Walter Craig, Wichita, KS
Douglas C. Hobbs, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director